

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA STATE  
CONFERENCE OF THE NAACP, *et al.*,

*Plaintiffs,*

v.

AL SCHMIDT, in his official capacity as  
Secretary of the Commonwealth, *et al.*,

*Defendants*

and

REPUBLICAN NATIONAL  
COMMITTEE, *et al.*,

*Intervenor-Defendants*

Case No. 1:22-cv-00339-SPB

**SECOND SUPPLEMENTAL MEMORANDUM REGARDING THE STATUS  
OF THE PENDING CROSS-MOTIONS FOR SUMMARY JUDGMENT**

On September 16, Plaintiffs submitted a supplemental response to the Court's September 3, 2024 Order (ECF No. 454) noting the vacatur of the Pennsylvania Commonwealth Court's decision in *Black Political Empowerment Project v. Schmidt*, 2024 WL 400321 (Pa. Commw. Ct. Aug. 30, 2024) ("*B-PEP*") on procedural grounds. Plaintiffs stated that, unless instructed otherwise, they would file a further supplemental memorandum if further state court litigation on this issue is initiated or renewed.

After that, a group of organizational plaintiffs including those here filed a King's Bench petition in the Supreme Court of Pennsylvania on the same issue as *B-PEP*—namely, whether the Pennsylvania Constitution prohibited enforcement of the

envelope-dating requirement to disenfranchise Pennsylvania voters. On October 5, the Pennsylvania Supreme Court denied review without reaching the merits. *See New PA Project Educ. Fund, et al. v. Schmidt, et al.*, No. 112 MM 2024 (Pa. Oct. 5, 2024).

Meanwhile, the same state constitutional argument is also raised in an election appeal pursuant to 25 P.S. § 3157 that is currently pending in Commonwealth Court, with expedited briefing concluded on October 14. *See Baxter v. Philadelphia County Board of Elections*, Nos. 1305 C.D. 2024, 1309 C.D. 2024 (Pa. Commw. Ct.). GOP Intervenor here are also intervenors in that case.

The status of the issue is thus unchanged. At present, there is no precedential ruling from any court of statewide jurisdiction that would protect voters from disenfranchisement due to the enforcement of the meaningless envelope-date rule. Plaintiffs accordingly maintain their request that this Court rule on the pending cross-motions in order to ensure the protection of their federal constitutional rights.

Unless instructed otherwise, Plaintiffs will file a further supplemental memorandum if any state court of statewide jurisdiction issues a ruling that would otherwise protect Pennsylvania voters from unlawful disenfranchisement .

### **CONCLUSION**

Plaintiffs' motion for summary judgment should be granted.

Dated: October 15, 2024

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on the date set forth below, I caused a true and correct copy of the foregoing Supplemental Memorandum to be served via the Court's electronic filing system upon all counsel of record.

Dated: October 15, 2024

Respectfully submitted,

/s/ Ari J. Savitzky  
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*Counsel for Plaintiffs*